

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

COREY BARLOW **PETITIONER**
VERSUS **CIVIL ACTION NO. 3:10CV345 CWR-LRA**
CHRISTOPHER EPPS **RESPONDENT**

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on the motion of Petitioner Corey Barlow to dismiss his federal habeas corpus petition. Barlow seeks to dismiss his petition on the grounds that he was unable to access the trial court record and transcript prior to filing his state court motion for post-conviction relief and federal habeas petition. Petitioner maintains that because the State placed him in a maximum security prison “without access to legal facilities,” he was unable to effectively prepare his petition for habeas corpus relief. As grounds for relief, Petitioner Barlow requests that this court dismiss his petition without prejudice so that he may secure the state court record and exhaust any amended claims that may arise from his examination of the record.

In opposition to the motion, Respondent has verified that all inmates in the Mississippi Department of Corrections, (“MDOC”) including inmates on death row and under maximum security, have access to legal assistance upon request through the Inmate Legal Assistance Program. Respondent also notes that notwithstanding Petitioner’s claims, he was still able to file his federal habeas petition and memorandum in support without the transcript or court record. Respondent maintains further that a dismissal

without prejudice would be unfairly prejudicial because an answer to the petition was filed several months ago.

Having considered the matter carefully, the court finds that Petitioner's motion to dismiss should be denied. The undersigned recommends, however, that Petitioner be granted an additional 90 days to request the transcript and to submit an amended petition.

Recommendation

It is therefore the recommendation of the undersigned United States Magistrate Judge that Petitioner's Motion to Dismiss be denied.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within 14 days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636, Fed. R. Civ. P. 72(b) (as amended, effective December 1, 2009).

This the 13th day of June 2011.

/s/ Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE